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Education Disparities Based on Wealth: Struggles Facing Poor Aspiring Lawyers
By Angelica Torres, Golden Gate University School of Law
May 20, 2015

Introduction

I grew up Mexican American and Native American in and around Richmond, California, an East Bay Area city that is infamous for its high murder and crime rates. I am the oldest daughter of two janitors, one with a high school education, and one with a seventh grade education. I am the granddaughter of a cleaning lady with less than a junior high school education. I grew up being told to “work hard in school so you won’t have to struggle like us when you grow up.” Thinking school would be my ticket out of a city and lifestyle of poverty, I took that advice to heart and, years later, here I am in my final month of law school.

I attended public schools in the Richmond Unified School District, now called the West Contra Costa Unified School District, for my entire K-12 education. I often did well in school per the teachers’ grading standards because I was a very quiet student who did not cause further disruptions in the chaotic classrooms. I remember sitting in the “overflow” part of the library, or the cafeteria, doing and being taught nothing for several weeks at a time, while my high school attempted to figure out which classrooms and teachers students would be assigned to. This was due to the massive budget cuts the district constantly faced. Among the things being cut at that time were required classes to get into a university and advanced placement (AP) classes, which made it a battle to get placed in them. School counselors, who assumed I had been misplaced in AP courses to begin with, often attempted to remove me from them in order to make room for those students whom they felt were more likely to be “college bound.”

I did not know anything about college and although my family was supportive of me attending, we had no money saved up for my education and no idea what the process of getting into college entailed. Determined to figure things out, I latched on to the mostly White and Asian students who were in the AP classes and hounded them for information about what they were doing to get into college. If those students joined a club, so did I. If those students enrolled in certain classes, I complained to the counselors until I too was placed in those classes. Through those students, I found out about a University of California, Berkeley program called the Educational Guidance Center (EGC), which helped low-income high school students plan for college, pay for the costs of the Preliminary Scholastic Aptitude Test (PSAT), the Scholastic Aptitude Test (SAT), and the American College Test (ACT), figure out and pay for college applications, and complete educational and financial aid requirements.¹ Because of this program, I was able to become the very first person in my family to navigate my way into college.

Although I was accepted into other schools, I went on to attend the private Saint Mary's College in nearby Moraga, California because I was offered a good amount of scholarship money there and I feared I would not be able to afford the additional costs of living on my own if I had to leave the Bay Area. At the time, I had to commute from my parents' house at the time in Pinole, California into the very wealthy city of Moraga during my four years of college. Despite facing culture shock, I excelled there. I wanted to attend law school straight out of college, but I could not afford it so I planned to take a year off and save money. Unfortunately, with the condition of the job market at that time, and the costs of repaying my monthly student loan bills from college, it ended up taking

¹ <http://outreach.berkeley.edu/node/36> (last visited April 18, 2015).

me over two years to save up enough money to apply for law school. Once I had saved up enough for the Law School Admissions Test (LSAT) preparation course, the test itself, and for law school applications, I applied without having any other savings. Due to its location and scholarship offer, I decided to attend Golden Gate University School of Law.

This paper will focus on my lack of knowledge about how growing up poor would make my own struggle to become a lawyer – especially a lawyer hoping to one day serve her own community – seem cluttered with unending obstacles. Given the costs of becoming a lawyer, and given that poverty disproportionately affects minorities, it is easy to understand why diversity is still lacking in the legal profession. Furthermore, because of the economic obstacles the poor face from the very beginning, attempting to work in the public interest field can add to the lists of challenges by disincentivizing those who truly wish to use their careers to help their own communities from doing so.

Part I will touch on the constitutional treatment of poverty under equal protection analysis and how that contributes to inequality of education and opportunities for the poor beginning at the K-12 public school level. **Part II** will reveal some of the financial costs leading up to law school (including college tuition), of applying to and getting into law school, of attending law school, and of becoming a member of the California Bar. **Part III** will identify the central ways in which starting off poor makes it difficult for aspiring lawyers to afford using their law degree to serve the communities they came from and explain how that disservice impacts impoverished communities.

I. The Substandard Public School Education Received by the Poor

Unfortunately, most poor children today receive a substandard education in comparison with wealthy children.² Additionally, since race and class continue to be inextricably linked, meaning that people of color are grossly overrepresented among the poor, people of color disproportionately receive a substandard education.³ Since poverty varies dramatically in accordance with education level in California and nationwide, the substandard education received by poor children of color contributes to those populations remaining in poverty.⁴ Latinos (23.6%) and African Americans (24.2%) have much higher poverty rates than Asians (12.6%) and whites (9.8%) in California and also nationwide.⁵ Additionally, “‘Latino and Black students comprise 80% of the student population in extreme poverty schools (90 to 100% poor),’ and more than 60% of black and Latino students attend high-poverty schools, compared with 18% of white students” nationally.⁶

Regrettably, Supreme Court jurisprudence seems to make it clear that ensuring equality in the quality of education that children of all socioeconomic backgrounds should receive is not among its priorities.⁷ Due to the gross inequities in the quality of

² Timothy D. Lynch, Education As A Fundamental Right: Challenging the Supreme Court’s Jurisprudence, 26 Hofstra L. Rev. 953, 955 (1998).

³ Peter Edelman, Where Race Meets Class: The 21st Century Civil Rights Agenda, 12 Geo. J. on Poverty L. & Pol’y 1 (2005).

⁴ http://www.ppic.org/main/publication_show.asp?i=261 (last visited April 18, 2015).

⁵ *Id.*

⁶ Michael A. Rebell, Poverty, "Meaningful" Educational Opportunity, and the Necessary Role of the Courts, 85 N.C. L. Rev. 1467, 1473 (2007).

⁷ See, e.g. *Keyes v. School District No. 1*, 413 U.S. 189 (1973), *Milliken v. Bradley* 418 U.S. 717 (1974), *Missouri v. Jenkins*, 515 U.S. 70 (1995), *Freeman v. Pitts*, 503 U.S. 467(1992), and *Board of Education of Oklahoma City v. Dowell*, 498 U.S. 237 (1991).

education between the rich and the poor, poor children's, (and disproportionately children of color's), chances of succeeding in life are greatly decreased.⁸

Furthermore, although race and class intersect, they have received very different treatment under an equal protection analysis.⁹ In order for disadvantaged groups wishing to bring suit for violations of the Equal Protection Clause to get the Court to apply the most rigorous level of judicial scrutiny, strict scrutiny, the group must not only show that the government intended to treat individuals differently, but the group must also show that it meets the criteria for a "suspect class."¹⁰ This means that the group must have an immutable trait, must be vulnerable in the political process, or must have suffered historical discrimination.¹¹ The Court has also considered whether the group's trait affects one's ability to perform or contribute to society.¹² If it does not, the Court has treated reliance on that trait as a "suspect classification."¹³ Applying strict scrutiny, if the group is determined to be of a suspect class or suspect classification, the state must then establish that it has a compelling interest that justifies and necessitates the law in question.¹⁴ The compelling-state-interest test balances the government's interest in the law and its purpose against an individual's constitutional right that is affected by the law. The law will only be upheld if the government's interest is strong enough.¹⁵

⁸ Beverly Moran & Stephanie M. Wildman, Race and Wealth Disparity: The Role of Law and the Legal System, 34 Fordham Urb. L.J. 1219, 1236 (2007).

⁹ Mario L. Barnes & Erwin Chemerinsky, The Disparate Treatment of Race and Class in Constitutional Jurisprudence, Law & Contemp. Probs., Fall 2009, at 109, 128-29.

¹⁰ Julie A. Nice, No Scrutiny Whatsoever: Deconstitutionalization of Poverty Law, Dual Rules of Law, & Dialogic Default, 35 Fordham Urb. L.J. 629, 644-45 (2008)

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ STRICT SCRUTINY, Black's Law Dictionary (10th ed. 2014).

¹⁵ COMPELLING-STATE-INTEREST TEST, Black's Law Dictionary (10th ed. 2014).

Although race is a suspect classification subject to strict scrutiny, poverty, wealth, and class have never been treated by the Supreme as a suspect classification.¹⁶ It has therefore only been subject to rational basis review, the least rigorous level of judicial scrutiny.¹⁷ This means that the government action at issue must only be rationally related to a legitimate governmental interest to be found constitutional under an equal protection analysis.¹⁸

Since most laws disadvantage the poor through their impact, it will usually be difficult to show that the government's intent was to harm the poor.¹⁹ Yet government decisions regarding the poor continue to disproportionately affect people of color given that they are overrepresented among the poor.²⁰ The courts could therefore benefit from taking the intersection of race and class into account under an equal protection analysis because the main purpose of suspect-classification is to protect vulnerable and chronically disadvantaged groups.²¹

For example, *San Antonio Independent School District v. Rodriguez* involved a class action suit where poor families residing in school districts with low property-tax bases, resulting in their schools receiving less money than those in wealthier

¹⁶ Mario L. Barnes & Erwin Chemerinsky, The Disparate Treatment of Race and Class in Constitutional Jurisprudence, Law & Contemp. Probs., Fall 2009, at 109, 128-29, Julie A. Nice, No Scrutiny Whatsoever: Deconstitutionalization of Poverty Law, Dual Rules of Law, & Dialogic Default, 35 Fordham Urb. L.J. 629, 630 (2008), and Julie A. Nice, Whither the Canaries: On the Exclusion of Poor People from Equal Constitutional Protection, 60 Drake L. Rev. 1023, 1041 (2012).

¹⁷ *Id.*

¹⁸ Shayan H. Modarres, The Fourteenth Amendment Isn't "Broke": Why Wealth Should Be a Suspect Classification Under The Equal Protection Clause, 3 Geo. J. L. & Mod. Critical Race Persp. 171, 180.

¹⁹ See Barnes & Chemerinsky, *supra* note 15, at 109 and 128-29.

²⁰ *Id.* at 125.

²¹ *Id.* at 118.

neighborhoods, challenged the disparate effects on poor communities because of the use of taxes as the means to fund schools.²² Regarding the lower courts' treatment of school-property-tax challenges as wealth-discrimination cases and the application of strict scrutiny, the Supreme Court said, "[they] have virtually assumed their findings of a suspect classification through a simplistic process of analysis."²³

In his dissent, Justice Marshall said, "[t]he Court today decides, in effect, that a State may constitutionally vary the quality of education which it offers its children in accordance with the amount of taxable wealth located in the school districts within which they reside."²⁴ He further explained that, "[t]he majority's holding can only be seen as a retreat from our historic commitment to equality of educational opportunity and as unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens."²⁵

In addition to the Supreme Court making judgments that skew school financing toward wealthier districts, the Court has also denied deference to legislative decisions to pursue desegregation plans even after the landmark decision of *Brown v. Board of Education*.²⁶ In that case, the Court held that "separate but equal" schools were unconstitutional and it committed the nation to equal educational opportunity for all children.²⁷ Today, however, our schools are segregated, mostly by district, at levels not

²² See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 93 S. Ct. 1278, 1285 (1973).

²³ *Id.*

²⁴ *Id.* at 1315-16.

²⁵ *Id.* at 1315-16.

²⁶ Michele Gilman, A Court for the One Percent: How the Supreme Court Contributes to Economic Inequality, 2014 Utah L. Rev. 389, 422 (2014).

²⁷ *Id.* at 424.

found since the beginning of desegregation in 1970.²⁸ Although desegregation is a proven method for improving the outcomes for poor, minority children, the Court has continued to reinforce inequality.²⁹

II. Financial Costs Poor Aspiring Attorneys Are Faced With

In spite of the hurdles I was up against, including the substandard public school education I received, I dreamed of becoming a lawyer one day. Unfortunately, I did not know and was not warned about how much all of this would end up costing me. In fact, I believed my parents and grandparents who told me that if I just did well in school, I would be able to become a lawyer, help my community, and escape poverty. The reality is that what exists in the United States is not just an unequal playing field, but two playing fields altogether one of which is an obstacle course. The comprehensive costs of a legal education just add to the list of obstacles which poor people of color, in this case poor aspiring lawyers, face on the road to becoming practicing members of the California Bar.

In California, the cost of college (tuitions and fees only) at a public university is about \$6,000-\$14,000 per year.³⁰ To attend a private university costs \$40,000 or more per year.³¹ This adds up to anywhere from \$24,000-\$160,000 (or more) just to attend a four year college (not including books, room and board, food, travel expenses, etc.).

In order to apply for law school, you must take the Law School Admissions Test (LSAT). Sitting for the test costs \$170 and then you must pay an additional \$28 for each

²⁸ *Id.* at 425.

²⁹ *Id.* at 423.

³⁰ <http://admission.universityofcalifornia.edu/paying-for-uc/tuition-and-cost/>,
<http://www.calstate.edu/sas/costofattendance/> (last visited April 18, 2015).

³¹ <http://www.stmarys-ca.edu/admissions-aid/tuition-fees> (last visited April 18, 2015).

and every school you wish to have your score sent to.³² Should you want to prepare adequately for this test, a preparation course or tutoring will run you anywhere from \$799-\$2599.³³ When you're done with that, applications to law school cost \$60-\$85 depending on the school.³⁴

Once you've spent all that money just to *get* into law school, the real costs begin. Law school can cost \$44,000-\$57,200 just for tuition and fees per year, not including the expensive casebooks that can cost up to \$300, living expenses, food, travel expenses, etc.³⁵ Once in law school, you must register with your state's bar. California charges law students \$113 for registration.³⁶ In order to become licensed, you must complete an application for determination of moral character which costs \$525 plus \$25-\$38 to complete the Live Scan.³⁷ You must also take and pass the MPRE which costs \$80.³⁸ Enrollment in a course to prepare you for the bar exam upon graduation of law school

³² <http://www.lsac.org/jd/lsat/lsat-cas-fees> (last visited April 18, 2015).

³³ <http://www.kaptest.com/lsat/lsat-prep-course/course-options> (last visited April 18, 2015).

³⁴ <http://law.ggu.edu/admissions/application-requirements/>,
<http://www.law.harvard.edu/prospective/jd/apply/the-application-process/resources.html>
(last visited April 18, 2015).

³⁵ <http://law.ggu.edu/law-student-services/registrar/tuition-and-fees/>,
<http://www.law.harvard.edu/prospective/gradprogram/sjd/financing/index.html> (last
visited April 18, 2015).

³⁶ https://www.calbarxap.com/applications/calbar/California_Bar_Registration/ (last
visited April 18, 2015).

³⁷ https://www.calbarxap.com/applications/calbar/California_Bar_Registration/,
<http://ag.ca.gov/fingerprints/publications/contact.php> (last visited April 18, 2015).

³⁸ <http://www.ncbex.org/about-ncbe-exams/mpre/test-dates-deadlines-and-fees/> (last
visited April 18, 2015).

will cost you \$3,895.³⁹ Registering for the California Bar Examination costs \$645 with a laptop fee of \$146.⁴⁰

Additionally, these costs ignore your cost of living (housing, food, etc.) while you take three months after graduation to study for the bar exam. If you do not have a paying job lined-up afterward, you may need another month or more to find one. You must also wait about four months to get your bar results back, which could limit your job prospects if employers prefer a bar accredited applicant. For those of us who do not have family or loved ones who can afford to financially support us during this time, we sustain additional stress on top of the stress that the bar exam already causes.

III. Deciding Whether to Pursue a Public Interest Career

Should you be a poor person, the expenses associated with becoming an attorney are likely to cause one great hardship and result in a law student taking out a great deal of loans with sky-high interest rates. Additionally, should you want to advocate for a community like the one you came from, the median salary for a new public interest attorney is “almost \$43,000 for legal services attorneys, \$45,000 for public interest lawyers in groups with issue-driven missions, \$50,500 for public defenders, and \$50,000 for local prosecutors.”⁴¹ When you have over \$200,000 in debt, a public interest lawyer’s salary disincentivizes law graduates from taking on a job serving the poor.

While some may argue that Loan Repayment Assistance Programs are available from a variety of sources including schools, employers, states and the federal government in

³⁹ <http://www.barbri.com/states/california/pricing/> (last visited April 18, 2015).

⁴⁰ https://www.calbarxap.com/applications/calbar/California_Bar_Registration/ (last visited April 18, 2015).

⁴¹

http://www.abajournal.com/news/article/are_public_interest_and_public_sector_careers_worth_the_cost_of_law_school/ (last visited April 18, 2015).

order to help you make payments on your educational loans,⁴² these programs have some critical flaws. For example, the program we should be concerned with here, the Public Service Loan Forgiveness Program (PSLF Program), purports to intend to encourage individuals to enter and continue to work full-time in public service jobs.⁴³ Under PSLF, a debtor may qualify for forgiveness of the remaining balance due on their Federal Direct Loan Program (Direct Loan Program) loans *after* making 120 qualifying payments on those loans while employed full-time by certain public service employers.⁴⁴ In other words, one must make 120 *full* payments for loan forgiveness to even kick in. If one has no other means of doing this besides using the money one earns from working in a public interest job, then making 120 full payments can be impossible or take years or sometimes decades to do if one has no outside funds to cover rent, food, and other everyday expenses.

Furthermore, if you opt to make payments based on your income in order to cope with paying everyday living expenses and making your loan payments, you will not qualify for the PSLF program given that such payments are not *full* payments. Additionally, the proposed cap on how much this program will forgive per debtor is \$57,500.⁴⁵ For those of us with debt remaining from our undergraduate degrees, and/or debt exceeding 120 full payments plus \$57,500, this program comes nowhere close to

⁴² <http://equaljusticeworks.org/ed-debt/students/loan-repayment-assistance-programs> (last visited May 13, 2015).

⁴³ <https://studentaid.ed.gov/sa/sites/default/files/public-service-loan-forgiveness.pdf> (last visited May 14, 2015).

⁴⁴ *Id.*

⁴⁵ <http://www2.ed.gov/about/overview/budget/budget15/justifications/s-loansoverview.pdf> (last visited May 14, 2015).

creating a level playing field for poor aspiring attorneys wishing to take on public service jobs.

While the costs of becoming a lawyer and the low salaries of public interest lawyers alone are enough to deter a poor person of color from trying to become a lawyer in their own community or one like it, the scarcity of people of color and people from poor communities as representatives in the legal profession contributes to a legal system that disserves those communities.

Lamentably, the numbers of Latino and African-American attorneys have practically remained stagnant over the years.⁴⁶ Three percent of California's lawyers were Latino in 1991, 3.7 percent in 2001, and 4.2 percent today.⁴⁷ These percentages remain in spite of the fact that Latinos make up 37.6 percent of California's population.⁴⁸ 2 percent of California's lawyers were African-American in 1991, 2.4 percent in 2001, 1.7 percent in 2006 and 2.7 percent today.⁴⁹ Again, these percentages are in spite of the fact that African-Americans make up 6.2 percent of the state's population.⁵⁰

If lawyers play a role in shaping the law and the system and there is an extreme lack of poor and minority people in the legal profession, then who with firsthand knowledge of our issues is representing our interests? Because the law is shaped by which cases are brought into court, the people who bring them, and the eventual outcomes, the law would be very different if all parties had equal access to both educational and legal resources. Additionally, the difficulty and expense that the poor and people of color must endure to

⁴⁶ <http://www.calbarjournal.com/January2012/TopHeadlines/TH1.aspx> (last visited April 18, 2015).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

achieve the goal of becoming lawyers themselves will not only ensure that the shortage of diversity continues in the legal profession, but it will also ensure that poor people of color continue to have few representatives who understand firsthand the issues and concerns that these communities need assistance addressing.

The truth is that “[r]ights mean nothing if nobody enforces them.”⁵¹ Cruz Reynoso provided an example of this and the importance of lawyers for the protection and creation of wealth with his description of a New Mexico program established to increase the number of Native American lawyers.⁵² “Soon we started seeing cases coming out of Arizona . . . in which Native American tribes sued to receive water that they were entitled to under treaties.”⁵³ This is just one example of the difference that access to educational and legal resources makes. If minorities did not face the impediments they do in attempting to become attorneys, and if they could more easily afford to work in areas of law in which they could help their own communities, those communities would likely benefit by receiving greater access to lawyers and legal resources.

Conclusion

The reason I have presented my own personal experience here is to shed light on the obstructions that poor people of color who aspire to be attorneys face. Poor minorities face an uphill journey from the very beginning due to the inferior education that they sadly continue to receive in public schools. The Supreme Court could improve upon this by taking the intersection of race and class into account under an equal protection analysis and applying a higher level of judicial scrutiny to cases involving poverty. The

⁵¹ Beverly Moran & Stephanie M. Wildman, Race and Wealth Disparity: The Role of Law and the Legal System, 34 Fordham Urb. L.J. 1219, 1236 (2007).

⁵² *Id.*

⁵³ *Id.*

Court should also consider the implications of making judgments that skew school financing toward wealthier districts and that deny deference to legislative decisions that pursue desegregation plans.

Those who are lucky enough to make it to law school can be haunted for life by the massive debt they have incurred. Additionally, due to the low salaries public interest lawyers receive, financially struggling lawyers can be disincentivized from practicing in public interest and from advocating for communities greatly in need of more access to legal resources. The cost to these communities can be the disappointing loss of a zealous representative with firsthand knowledge of the community. Such losses in great numbers can contribute to a legal system which creates and maintains financial, educational, and legal inequality among people based on race and socioeconomic level.